

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

BERINGER COMMERCE, INC., d/b/a
BLUE ACORN, iCi,

Plaintiff,

vs.

FIN CAP, INC., d/b/a "BLUEACORN.CO,"
BLUE ACORN PPP, LLC, BLUE OAK
FOREST, LLC, MICHAEL S. COTA,
JAMES FLORES, STEPHANIE
HOCKRIDGE REIS, and NATHAN REIS,

Defendants.

Civil Action No. 5:21-cv-251-BO

**ANSWER & RESPONSE TO
PLAINTIFF'S VERIFIED COMPLAINT**

NOW COMES Defendants Fin Cap, Inc., Blueacorn PPP, LLC and Blue Oak Forest, LLC (collectively, "Blueacorn PPP" or "Defendants") in response to Plaintiff's Verified Complaint (DE #1) ("Complaint") and aver and say:

FIRST DEFENSE
(Response to the Allegations of the Complaint)

INTRODUCTION

In the "Introduction" of the Complaint, Plaintiff sets forth several unnumbered paragraphs. Defendants deny the factual allegations in these paragraphs and deny that the allegations support any conclusion of wrongdoing on behalf of Blueacorn PPP. Defendants particularly deny that their businesses have infringed on Plaintiff's trademarks or created actionable confusion. Further, Defendants state that the Court has dissolved a temporary

restraining order and denied a preliminary injunction that would prevent Defendants from use of the “blue acorn” name.

In response to the individually numbered paragraphs of the Complaint, Blueacorn PPP avers and states as follows:

1. Upon information and belief, Paragraph 1 of the Complaint is admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 5 of the Complaint, which means they are denied.
6. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 6 of the Complaint, which means they are denied.
7. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 7 of the Complaint, which means they are denied.
8. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 8 of the Complaint, which means they are denied.
9. In response to the allegations of Paragraph 9 of the Complaint, Defendants deny that Defendants Michael S. Cota, James Flores, Stephanie Hockridge Reis, and Nathan Reis (as referred to in the Complaint) are controlling, directing, or authorizing the activities of the Defendants. Defendants further deny that any of the individuals referred to in Paragraph 9 of the Complaint “established” Defendants.

10. The allegations of Paragraph 10 of the Complaint do not appear to be factual statements, but legal conclusions and therefore require no response. However, Defendants do not dispute that facts exist that would support this Court's subject matter jurisdiction.

11. The allegations of Paragraph 11 of the Complaint do not appear to be factual statements, but legal conclusions and therefore require no response. However, Defendants deny that the Plaintiff can recover on its federal claims, and therefore deny that the state law claims are actionable.

12. The allegations of Paragraph 12 of the Complaint are not factual statements, but legal conclusions and therefore require no response. However, Defendants do not dispute that facts exist that would support a single court hearing all claims in this Action.

13. In response to the allegations in Paragraph 13 of the Complaint, Defendants do not dispute that facts exist that would support proper venue being in the Eastern District of North Carolina because Plaintiff is alleged to have suffered harm here, but Defendants deny that "a substantial part of the events giving rise to this action" occurred in North Carolina given that Plaintiff alleges harm occurring at its South Carolina offices and Defendants are alleged to have infringed on Plaintiff's marks online in a nationwide market.

14. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 14 of the Complaint, which means they are denied.

15. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 15 of the Complaint, which means they are denied.

16. In response to the allegations in Paragraph 16 of the Complaint, Defendants admit that Plaintiff operates the website domain "https://www.blueacornici.com/". Defendants lack

knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 16 of the Complaint, which means they are denied.

17. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 17 of the Complaint, which means they are denied.

18. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 18 of the Complaint, which means they are denied.

19. In response to the allegations in Paragraph 19 of the Complaint, Defendants admit that Plaintiff operates the website domains “blueacorn.com” and “blueacornici.com”. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 19 of the Complaint, which means they are denied.

20. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 20 of the Complaint, which means they are denied.

21. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 21 of the Complaint, which means they are denied.

22. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 22 of the Complaint, including Exhibit A, which means they are denied.

23. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 23 of the Complaint, which means they are denied.

24. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 24 of the Complaint, which means they are denied.

25. In response to the allegations in Paragraph 25 of the Complaint, upon information and belief, Defendants assert that Plaintiff has abandoned the “Blue Acorn” trademark. As to the

remaining allegations, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 25 of the Complaint, including Exhibit B, which means they are denied.

26. In response to the allegations in Paragraph 26 of the Complaint, Defendants assert that Plaintiff has materially changed its “Blue Acorn” trademark over the years, and thus, cannot tack back to the priority of such various uses. As to the remaining allegations, Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 26 of the Complaint, including Exhibit B, which means they are denied.

27. Upon information and belief, Defendants admit only that it appears the Blue Acorn trademark and the acorn design have undergone material alterations over the years. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 27 of the Complaint, which means they are denied.

28. Denied.

29. Denied.

30. In response to the allegations in Paragraph 30 of the Complaint, Defendants admit that Exhibit C is attached to the Complaint and appears to include a US Patent and Trademark Office registration certificate, the text of which speaks for itself. Defendants deny any allegations inconsistent with the text of Exhibit C. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 30 of the Complaint, which means they are denied.

31. In response to the allegations in Paragraph 31 of the Complaint, Defendants admit that Exhibit C is attached to the Complaint and appears to include a US Patent and Trademark

Office registration certificate, the text of which speaks for itself. Defendants deny any allegations in Paragraph 31 of the Complaint inconsistent with the text of Exhibit C.

32. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 32 of the Complaint, which means they are denied.

33. Defendants admit that Exhibit C is attached to the Complaint and appears to include a US Patent and Trademark Office TSDR record printout, the text of which speaks for itself. Defendants deny any allegations in Paragraph 33 of the Complaint inconsistent with the text of Exhibit C.

34. Defendants admit that Exhibit C is attached to the Complaint and appears to include a US Patent and Trademark Office TSDR record printout, the text of which speaks for itself. Defendants deny any allegations in Paragraph 34 of the Complaint inconsistent with the text of Exhibit C.

35. Defendants admit that Exhibit C is attached to the Complaint and appears to include a US Patent and Trademark Office TSDR record printout, the text of which speaks for itself. Defendants deny any allegations in Paragraph 35 of the Complaint inconsistent with the text of Exhibit C.

36. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 36 of the Complaint, which means they are denied.

37. Defendants admit that Exhibit C is attached to the Complaint and appears to include a US Patent and Trademark Office registration certificate, the text of which speaks for itself. Defendants deny any allegations in Paragraph 37 of the Complaint inconsistent with the text of Exhibit C.

38. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 38 of the Complaint, which means they are denied.

39. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 39 of the Complaint, which means they are denied.

40. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 40 of the Complaint, which means they are denied.

41. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 41 of the Complaint, including Exhibit A, which means they are denied.

42. Denied.

43. Defendants admit that Exhibit C is attached to the Complaint and appears to include a US Copyright Office application filing and a May 10, 2021 refusal letter, the text of each of which speak for themselves. Defendants deny any allegations in Paragraph 43 of the Complaint inconsistent with the text of Exhibit C. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 43 of the Complaint, which means they are denied.

44. Defendants admit that Exhibit C is attached to the Complaint and appears to include documents entitled “First Reconsideration” and “Notice of Complaint,” the text of each of which speak for themselves. Defendants deny any allegations in Paragraph 44 of the Complaint inconsistent with the text of Exhibit C. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 44 of the Complaint, which means they are denied.

45. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 45 of the Complaint, which means they are denied.

46. Denied.

47. Denied.

48. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 48 of the Complaint, which means they are denied.

49. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 49 of the Complaint, which means they are denied. Defendants specifically deny that Exhibits A-C show that Plaintiff has valuable reputation and goodwill in the Blue Acorn brand.

50. Denied.

51. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 51 of the Complaint, which means they are denied.

52. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 52 of the Complaint, including Exhibit D, which means they are denied.

53. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 53 of the Complaint, which means they are denied.

54. Admitted.

55. Admitted.

56. In response to the allegations of Paragraph 56 of the Complaint, Defendants admit that Exhibit E identifies the nature of “blueacorn.co’s” business to be software.

57. In response to the allegations of Paragraph 57 of the Complaint, Defendants admit that the domain name “blueacorn.co” was registered in April 2020. The remaining allegations of Paragraph 57 are denied.

58. In response to the allegations of Paragraph 58 of the Complaint, Defendants admit that Blueacorn PPP was created specifically in response to the problem small business owners were experiencing at the start of the Covid-19 pandemic accessing Paycheck Protection Program (“PPP”) loan funds through a bank. Blueacorn PPP itself is not a lender. Instead, Blueacorn PPP is a lender service provider that utilizes technology to work with community lenders as their online processing and support platform. Any remaining allegations of Paragraph 58 of the Complaint are denied.

59. As part of its role as a lender service provider, Blueacorn PPP has access to personally identifiable information and takes great care in protecting the confidentiality of that information. Any remaining allegations of Paragraph 59 of the Complaint are denied.

60. In response to the allegations of Paragraph 60 of the Complaint, Defendants admit only that in February and March of 2021 they increased their online marketing efforts. Any remaining allegations of Paragraph 60 of the Complaint are denied.

61. Defendants admit that on or about April 16, 2021, Blue Acorn PPP, LLC was established as a parent corporate entity, and that the text of Exhibit E speaks for itself. Any remaining allegations of Paragraph 61 of the Complaint are denied.

62. In response to the allegations of Paragraph 62 of the Complaint, Defendants admit that they have previously promoted their businesses through the websites “blueacorn.co,” “blueppp.net,” “blueppp.com,” and “howndppp.com,” but that Defendants are no longer accepting or processing new applicants. Defendants further admit that the website

“getblueacorn.com” is still active as a website for Defendants’ customers to log into and reflects that the website is not affiliated with Plaintiff. Except as admitted, the remaining allegations of Paragraph 62 of the Complaint are denied.

63. In response to the allegations of Paragraph 63 of the Complaint, Defendants admit that they have previously promoted their businesses through the websites “blueacorn.co,” “blueppp.net,” “blueppp.com,” and “howndppp.com,” and that these websites utilized a questionnaire, but since May 30, 2021, Defendants are no longer accepting or processing new applicants through these websites. Defendants further admit that the website “getblueacorn.com” is still active as a website for Defendants’ customers to log into and reflects that the website is not affiliated with Plaintiff. Except as admitted, the remaining allegations of Paragraph 63 of the Complaint are denied.

64. In response to the allegations of Paragraph 64 of the Complaint, Defendants admit that they have previously promoted their businesses through the websites “blueacorn.co,” “blueppp.net,” “blueppp.com,” and “howndppp.com,” and that these websites utilized a questionnaire, but Since May 30, 02021, Defendants are no longer accepting or processing new applicants. Except as admitted, the remaining allegations of Paragraph 64 of the Complaint are denied.

65. In response to the allegations of Paragraph 65, Defendants admit only that they have customers with addresses in North Carolina. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 65 of the Complaint, which means they are denied.

66. In response to the allegations of Paragraph 66 of the Complaint, Defendants admit that beginning in 2021, Blueacorn PPP increased marketing and utilized several affiliates to

market their services. These affiliates were independent third-party companies that advertised to generate customer leads to Blueacorn PPP. Blueacorn PPP has since ceased all outside marketing activities for PPP loans. Except as herein admitted, the remaining allegations of Paragraph 66 are denied.

67. In response to the allegations of Paragraph 67 of the Complaint, Defendants admit only that they advertised on certain social media platforms Blueacorn PPP has since ceased all outside marketing activities for PPP loans. Except as herein admitted, the remaining allegations of Paragraph 67 are denied.

68. In response to the allegations of Paragraph 68 of the Complaint, Defendants admit only that they have engaged in nationwide marketing and advertising. Any remaining allegations of Paragraph 68 are denied.

69. In response to the allegations of Paragraph 69 of the Complaint, Defendants admit only that they have engaged in nationwide marketing and advertising, including on radio and billboards. Any remaining allegations of Paragraph 69 are denied.

70. In response to the allegations of Paragraph 70 of the Complaint, Defendants admit only that they have used the trademark “BLUEACORN”, like many other businesses, for services wholly unrelated to those of Plaintiff. Defendants deny any remaining allegations of Paragraph 70.

71. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 71 of the Complaint, including Exhibit G, which means they are denied.

72. Denied.

73. Denied.

74. Denied.

75. Denied.

76. Denied.

77. In response to the allegations of Paragraph 77 of the Complaint, Defendants admit only that they have customers with addresses in North Carolina. The remaining allegations of Paragraph 77 are denied.

78. Denied.

79. In response to the allegations of Paragraph 79 of the Complaint, Defendants admit that beginning in 2021, Blueacorn PPP utilized several affiliates to market their services. These affiliates were independent third-party companies that advertised to generate customer leads to Blueacorn PPP. One of these affiliates posted a promotional video on YouTube that included a “blue acorn” logo that is referenced in the Verified Complaint filed by Plaintiff without prior knowledge of, or approval by, Blueacorn PPP. Except as admitted herein, the remaining allegations of Paragraph 79 of the Complaint are denied.

80. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 80 of the Complaint, which means they are denied.

81. Denied.

82. Denied.

83. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 83 of the Complaint, which means they are denied.

84. Denied.

85. Upon information and belief, Defendants admit that Plaintiff has received telephone calls and other correspondence from people and entities apparently attempting to reach

Defendants. Defendants deny that these misdirected communications are evidence of confused customers and state that whether any marks associated with Defendants are confusingly similar to Plaintiff's marks are not factual statements, but legal conclusions and therefore require no response. Any remaining allegations of Paragraph 85 of the Complaint are denied.

86. Upon information and belief, Defendants admit that Plaintiff has received telephone calls and other correspondence from people and entities apparently attempting to reach Defendants. Defendants deny that these misdirected communications are evidence of confused customers and state that whether any marks associated with Defendants are confusingly similar to Plaintiff's marks are not factual statements, but legal conclusions and therefore require no response. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 86 of the Complaint, including Exhibit F, which means they are denied.

87. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 87 of the Complaint, which means they are denied.

88. Upon information and belief, Defendants admit that Plaintiff has received telephone calls and other correspondence from people and entities apparently attempting to reach Defendants. Defendants deny that these misdirected communications are actionable against them and state that whether any marks associated with Defendants are confusingly similar to Plaintiff's marks are not factual statements, but legal conclusions and therefore require no response. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 88 of the Complaint, including Exhibit F, which means they are denied.

89. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 89 of the Complaint, which means they are denied.

90. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 90 of the Complaint, which means they are denied.

91. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 91 of the Complaint, which means they are denied.

92. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 92 of the Complaint, which means they are denied.

93. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 93 of the Complaint, which means they are denied.

94. Denied.

95. Denied.

96. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 96 of the Complaint, which means they are denied.

97. Denied. Since the filing of the Verified Complaint, Blueacorn PPP has instructed the third-party affiliate to remove the BCI “blue acorn” logo from the YouTube promotional video in Plaintiff’s Complaint.

98. Denied.

99. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 99 of the Complaint, which means they are denied.

100. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 100 of the Complaint, which means they are denied.

101. Denied.

102. Denied.

103. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 103 of the Complaint, which means they are denied.

104. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 104 of the Complaint, including Exhibit H, which means they are denied.

105. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 105 of the Complaint, which means they are denied.

106. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 106 of the Complaint, which means they are denied.

107. Denied.

108. Denied.

109. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 109 of the Complaint, which means they are denied.

110. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 110 of the Complaint, which means they are denied.

111. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 111 of the Complaint, which means they are denied.

112. Denied.

113. Denied.

114. Defendants admit that Exhibit I is a copy of a letter that Defendants received after outside general counsel for Defendants inquired about it. Defendants deny receiving a copy of

the letter on or about April 8, 2020 via certified mail. Except as herein admitted, the remaining allegations of Paragraph 114 of the Complaint are denied.

115. In response to the allegations of Paragraph 115 of the Complaint, Defendants deny receiving a copy of the April 8, 2020 letter until after outside general counsel for Defendants inquired about it following an additional written communication from Plaintiffs. Except as herein admitted, the remaining allegations of Paragraph 115 of the Complaint are denied.

116. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 116 of the Complaint, which means they are denied.

117. In response to the allegations of Paragraph 117 of the Complaint, Defendants admit that on or about May 19, 2021, outside general counsel for Defendants received a copy of a letter dated May 12, 2021 from counsel for Plaintiff which enclosed a few mail items that had been forwarded to Plaintiff. Defendants further admit that Exhibit K appears to be a copy of the May 12, 2021 letter and that Exhibit L, under seal, appears to be a copy of the mailed items therein enclosed. Except as herein admitted, Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 117 of the Complaint, which means they are denied.

118. In response to the allegations of Paragraph 118 of the Complaint, Defendants admit that on or about May 27, 2021, outside general counsel for Defendants received a copy of a letter dated May 26, 2021 from counsel for Plaintiff. Defendants further admit that Exhibit O appears to be a copy of the May 26, 2021 letter. Except as herein admitted, Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 118 of the Complaint, which means they are denied.

119. Defendants admit that they received a copy of Exhibit O and that the content of Exhibit O speaks for itself. Defendants deny any allegations of Paragraph 119 to the contrary.

120. Defendants admit that they received a copy of Exhibit O and that the content of Exhibit O speaks for itself. Defendants deny any allegations of Paragraph 120 to the contrary.

121. Denied.

122. Defendants, through their outside general counsel, admit reaching out to counsel for Plaintiff, but deny the remaining allegations of Paragraph 122.

123. Denied.

124. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 124 of the Complaint, which means they are denied.

125. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 125 of the Complaint, which means they are denied.

126. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 126 of the Complaint, which means they are denied.

127. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 127 of the Complaint, which means they are denied.

128. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 128 of the Complaint, which means they are denied.

129. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 129 of the Complaint, which means they are denied.

130. Defendants admit that Plaintiff has filed this action, but the remaining allegations of Paragraph 130 are denied.

COUNT 1

131. In response to the allegations of Paragraph 131, Defendants incorporate and restate their prior responses as stated herein.

132. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 132 of the Complaint, which means they are denied.

133. Denied.

134. Denied.

135. The allegations of Paragraph 135 of the Complaint do not appear to be factual statements, but legal conclusions and therefore require no response. To the extent a response is necessary, the allegations of Paragraph 135 are denied.

136. Denied.

137. Denied.

138. Denied.

139. Denied.

140. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 140 of the Complaint, which means they are denied.

141. Denied.

142. The allegations of Paragraph 142 of the Complaint do not appear to be factual statements, but legal conclusions and therefore require no response. To the extent a response is necessary, the allegations of Paragraph 142 are denied.

143. Denied.

144. Denied.

145. The allegations of Paragraph 145 of the Complaint do not appear to be factual statements, but legal conclusions and therefore require no response. To the extent a response is necessary, the allegations of Paragraph 145 are denied.

146. Denied.

147. Denied.

148. Denied.

149. Denied.

COUNT II

150. In response to the allegations of Paragraph 150, Defendants incorporate and restate their prior responses as stated herein.

151. Denied.

152. Denied.

153. Denied.

154. The allegations of Paragraph 154 of the Complaint do not appear to be factual statements, but legal conclusions and therefore require no response. To the extent a response is necessary, the allegations of Paragraph 154 are denied.

155. Denied.

156. Denied.

157. Denied.

158. Denied.

COUNT III

159. In response to the allegations of Paragraph 159, Defendants incorporate and restate their prior responses as stated herein.

160. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 160 of the Complaint, which means they are denied.

161. Denied.

162. Denied.

163. Denied.

164. The allegations of Paragraph 164 of the Complaint do not appear to be factual statements, but legal conclusions and therefore require no response. To the extent a response is necessary, the allegations of Paragraph 164 are denied.

165. Denied.

166. The allegations of Paragraph 166 of the Complaint do not appear to be factual statements, but legal conclusions and therefore require no response. To the extent a response is necessary, the allegations of Paragraph 166 are denied.

167. Denied.

168. Denied.

169. Denied.

170. Denied.

COUNT IV

171. In response to the allegations of Paragraph 171, Defendants incorporate and restate their prior responses as stated herein.

172. The allegations of Paragraph 172 of the Complaint do not appear to be factual statements, but legal conclusions and therefore require no response. To the extent a response is necessary, the allegations of Paragraph 172 are denied.

173. Defendants admit that Exhibit C is attached to the Complaint and appears to include a US Copyright Office application filing and a May 10, 2021 refusal letter, the text of each of which speak for themselves. Defendants deny any allegations inconsistent with the text of Exhibit C. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 173 of the Complaint, which means they are denied.

174. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 174 of the Complaint, which means they are denied.

175. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 175 of the Complaint, which means they are denied.

176. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 176 of the Complaint, which means they are denied.

177. Denied.

178. Denied.

179. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 179 of the Complaint, which means they are denied.

180. Upon information and belief, Defendants admit that they have never paid Plaintiff for any good or service but deny that there has ever been an obligation to do so.

181. Denied.

182. Denied.

183. The allegations of Paragraph 183 of the Complaint do not appear to be factual statements, but legal conclusions and therefore require no response. To the extent a response is necessary, the allegations of Paragraph 183 are denied.

184. Denied.

185. Denied.

186. Denied.

187. Denied.

188. Denied.

189. Denied.

190. Denied.

191. Denied.

COUNT V

192. In response to the allegations of Paragraph 192, Defendants incorporate and restate their prior responses as stated herein.

193. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 193 of the Complaint, which means they are denied.

194. Denied.

195. Upon information and belief, Defendants admit that Plaintiff has use Plaintiff's marks in North Carolina. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 195 of the Complaint, which means they are denied.

196. Denied.

197. Denied.

198. Denied.

199. Denied.

200. Denied.

201. Denied.

202. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 202 of the Complaint, which means they are denied.

203. Denied.

204. The allegations of Paragraph 204 of the Complaint do not appear to be factual statements, but legal conclusions and therefore require no response. To the extent a response is necessary, the allegations of Paragraph 204 are denied.

205. Denied.

206. Denied.

207. The allegations of Paragraph 207 of the Complaint do not appear to be factual statements, but legal conclusions and therefore require no response. To the extent a response is necessary, the allegations of Paragraph 207 are denied.

208. Denied.

209. Denied.

210. Denied.

211. Denied.

COUNT VI

212. In response to the allegations of Paragraph 212, Defendants incorporate and restate their prior responses as stated herein.

213. Denied.

214. Denied.

215. The allegations of Paragraph 215 of the Complaint do not appear to be factual statements, but legal conclusions and therefore require no response. To the extent a response is necessary, the allegations of Paragraph 215 are denied.

216. Denied.

Defendants specifically deny any allegation not specifically admitted herein or that has otherwise not been denied through the legal effect of Defendants' response. Defendants further deny Plaintiff's Prayer for Relief.

**SECOND AFFIRMATIVE DEFENSE
(No Damages)**

Plaintiff has not suffered any recoverable damages.

**THIRD AFFIRMATIVE DEFENSE
(Causation)**

Plaintiff's damages, if any, were not proximately caused by Defendants.

**FOURTH AFFIRMATIVE DEFENSE
(Causation – Acts of Others)**

Plaintiff's damages, if any, were caused by third parties or by the Plaintiff itself.

**FIFTH AFFIRMATIVE DEFENSE
(Fair Use)**

The claims of copyright infringement made in the Complaint are bared, in whole or in part, by the doctrine of fair use.

**SIXTH AFFIRMATIVE DEFENSE
(Lack of Originality / Merger)**

Plaintiff's claims are barred because the alleged copyrights are invalid due to the design consisting of un-protectable idea(s) or being a common shape or design lacking sufficient originality. Plaintiff's claims, including their assertion of copyright protection, are barred by the doctrine of Merger and/or lack sufficient originality to be subject to copyright protection.

SEVENTH AFFIRMATIVE DEFENSE
(Lack of Standing for Failure to Comply with 17 U.S.C. Section 411(a))

Plaintiff's copyright application for its alleged Blue Acorn design has not been registered by the United States Copyright Office. Furthermore, Plaintiff's copyright application has not been finally refused, and in fact, the Plaintiff pleads that it has filed a request for reconsideration. Therefore, Plaintiff lacks standing to bring its copyright claims.

EIGHTH AFFIRMATIVE DEFENSE
(Failure to Police Trademarks)

Plaintiff has failed to police its mark(s) alleged herein to such an extent throughout the United States that it has lost its ability to serve as an indicator of source for Plaintiff and should be deemed abandoned.

NINTH AFFIRMATIVE DEFENSE
(Abandonment)

Plaintiff has abandoned its BLUE ACORN mark(s) with the intention not to resume use. In addition, with respect to the BLUE ACORN and BLUE ACORN ICI trademarks, Plaintiff, parent company, used the BLUE ACORN and BLUE ACORN ICI trademarks in an unlicensed manner while the marks were owned by a subsidiary for a period of years as evidenced by Exhibit A to the Complaint. As a result of such "naked licensing", Plaintiff has lost all trademark rights in the BLUE ACORN and BLUE ACORN ICI trademarks.

TENTH AFFIRMATIVE DEFENSE
(Lack of Irreparable Harm)

Plaintiff's request for injunctive relief is barred because Plaintiff cannot show that it will suffer any irreparable harm from the alleged conduct.

ELEVENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

Plaintiff's claims are barred, in whole or in party, by the doctrine of unclean hands.

**TWELVETH AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

Plaintiff has failed to take reasonable steps to mitigate its claimed damages, if any exist.

**THIRTEENTH AFFIRMATIVE DEFENSE
(Unconstitutionality)**

Civil penalties, punitive damages, and treble damages sought by Plaintiff under its claims are punitive in nature and will deprive Defendant of Due Process guaranteed under the United States Constitution and the Constitution of North Carolina. Therefore, the remedies requested by Plaintiff are unconstitutional and should be barred.

**FOURTEENTH AFFIRMATIVE DEFENSE
(Registrant)**

Plaintiff's ACPA claims are barred, in whole or in part, because some or all of the Defendants are registrants of the alleged domain names.

**FIFTEENTH AFFIRMATIVE DEFENSE
(Attorneys' Fees)**

This Court should, in its discretion, award reasonable attorneys' fees and costs to Defendants pursuant to N.C. Gen. Stat. § 75-16.1 or under other applicable law as Plaintiff "knew, or should have known, the action was frivolous and malicious." Alternatively, reasonable attorneys' fees should be awarded to Defendants pursuant to 17 U.S.C. § 505.

WHEREFORE, Defendants Fin Cap, Inc., Blueacorn PPP, LLC and Blue Oak Forest, LLC do hereby pray that this Court:

1. Enter an Order denying any and all claims asserted by Plaintiff;
2. Enter an Order denying Plaintiff's prayer for relief, including but not limited to money damages and injunctive relief;
3. Dismiss this action and tax all costs, fees, and reasonable attorneys where applicable by law, against Plaintiff; and
4. Order any such other relief that this Court deems just and proper.

Respectfully submitted, this the 20th day of July, 2021.

NELSON MULLINS RILEY & SCARBOROUGH LLP

/s/ Christopher J. Blake

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LLC and Blue Oak Forest, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

**NELSON MULLINS RILEY & SCARBOROUGH
LLP**

/s/ Christopher J. Blake

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